



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R07-OAR-2021-0667; FRL-9105-02-R7]

Air Plan Approval; Missouri Redesignation Request and Associated Maintenance Plan for the Jackson County 2010 SO₂ 1-Hour NAAQS Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On February 18, 2021, the State of Missouri submitted a request for the Environmental Protection Agency (EPA) to redesignate the Jackson County, Missouri, 2010 1-hour sulfur dioxide (SO₂) National Ambient Air Quality Standard (NAAQS) nonattainment area to attainment and approve a State Implementation Plan (SIP) revision containing a maintenance plan for the area. The State provided a supplement to the maintenance plan on September 7, 2021. In response to these submittals, the EPA is taking the following final actions: approve the State's plan for maintaining attainment of the 2010 1-hour SO₂ primary standard in the area; and approve the State's request to redesignate the Jackson County SO₂ nonattainment area to attainment for the 2010 1-hour SO₂ primary standard. This redesignation action addresses the EPA's obligation under a consent decree which establishes a deadline of March 31, 2022, for the EPA to determine under Clean Air Act (CAA) section 179(c) whether the Jackson County SO₂ nonattainment area attained the NAAQS by the October 4, 2018, attainment date.

DATES: This final rule is effective on **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R07-OAR-2021-0667. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov> or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

FOR FURTHER INFORMATION CONTACT: Wendy Vit, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at (913) 551-7697 or by email at vit.wendy@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," and "our" refer to the EPA.

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I. What is Being Addressed in this Document?

On February 18, 2021, the State submitted a request for redesignation of the Jackson County SO₂ nonattainment area to attainment and a SIP revision containing a 10-year maintenance plan for the area. On September 7, 2021, the State submitted a supplement to the maintenance plan consisting of a Consent Agreement between Missouri and Vicinity Energy - Kansas City (Vicinity, formerly Veolia-Kansas City) and an updated air dispersion modeling demonstration to support the redesignation. The EPA's proposal at 86 FR 59075 [October 26, 2021] discusses the EPA's review of the redesignation request, the maintenance plan, and the maintenance plan supplement (including the Consent Agreement and updated modeling demonstration) and provides support for the EPA's proposed approval of the request to redesignate the area to attainment and for proposed approval of the 10-year maintenance plan. Additional analysis of the redesignation request, 10-year maintenance plan, Consent Agreement, and supplemental modeling information is provided in a Technical Support Document (TSD) included in this docket. The public comment period on the EPA's proposed rule opened on October 26, 2021, the date of its publication in the *Federal Register* and closed on November 26, 2021. During this period, the EPA received no comments.

II. Have the Requirements for Approval of a SIP Revision Been Met?

The State submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The State provided public notice on the February 2021 SIP submittal from November 2, 2020, to December 10, 2020 and held a public hearing on December 3, 2020. The State received and addressed three comments from one source (the EPA). The State revised the maintenance plan based on public comment prior to submitting it to the EPA. Missouri held a public hearing for the September 2021 maintenance plan supplement on July 29, 2021, and made the supplement available for public review and comment from June 28, 2021, through August 5, 2021. Missouri did not receive any public comments on the maintenance plan supplement.

In addition, as explained in the EPA's proposed rule (and in more detail in the technical support document which is included in the docket for this action), the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

III. What are the Actions the EPA is Taking?

The EPA is taking final action to approve the maintenance plan for the Jackson County 2010 SO₂ 1-hour NAAQS nonattainment area into the Missouri SIP (as compliant with CAA section 175A). The maintenance plan demonstrates that the area will continue to maintain the 2010 1-hour SO₂ NAAQS and includes a process to develop contingency measures to remedy any future violations of

the 2010 1-hour SO₂ NAAQS and procedures for evaluation of potential violations.

Additionally, the EPA is taking final action to determine that the Jackson County 2010 SO₂ 1-hour NAAQS nonattainment area has met the criteria under CAA section 107(d) (3) (E) for redesignation from nonattainment to attainment for the 2010 1-hour SO₂ NAAQS. On this basis, the EPA is approving Missouri's redesignation request for the area and changing the legal designation of the portion of Jackson County designated nonattainment at 40 CFR part 81 to attainment for the 2010 1-hour SO₂ NAAQS.

IV. Environmental Justice Concerns.

When the EPA establishes a new or revised NAAQS, the CAA requires the EPA to designate all areas of the U.S. as either nonattainment, attainment, or unclassifiable. Area designations address environmental justice concerns by ensuring that the public is properly informed about the air quality in an area. If an area is designated nonattainment of the NAAQS, the CAA provides for the EPA to redesignate the area to attainment upon a demonstration by the state authority that air quality is attaining the NAAQS and will continue to maintain the NAAQS in order to ensure that all those residing, working, attending school, or otherwise present in those areas are protected, regardless of minority and economic status.

The EPA utilized the EJSCREEN tool to evaluate environmental and demographic indicators within the area. The

tool outputs are contained in the docket for this action. The demographic indicators from EPA's EJSCREEN tool demonstrate that there are vulnerable populations in the area, including people of color, low-income populations, linguistically isolated populations, and populations with less than high school-level education.

This action addresses a redesignation determination for the Jackson County, Missouri, area. Under CAA section 107(d)(3), the redesignation of an area to attainment/unclassifiable is an action that affects the status of a geographical area and does not impose any additional regulatory requirements on sources beyond those imposed by state law. As discussed in this document and the associated technical support document, Missouri has demonstrated that the air quality in the Jackson County area is attaining the NAAQS and will continue to maintain the NAAQS. For these reasons, this action does not result in disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples.

V. Incorporation by Reference.

In this document, the EPA is amending regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the Missouri State Implementation Plan described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these

materials generally available through www.regulations.gov and at the EPA Region 7 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document for more information).

VI. Statutory and Executive Order Reviews.

Under the Clean Air Act (CAA), the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve State choices, if they meet the criteria of the CAA. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; and
- This action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The basis for this determination is contained in Section IV of this action, "Environmental Justice Concerns."

The SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and

will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action

may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Maintenance plan, Redesignation, Sulfur oxides.

40 CFR Part 81

Environmental protection, Air pollution control, Designations, Intergovernmental relations, Redesignation, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: January 14, 2022.

Meghan A. McCollister,
Regional Administrator,
Region 7.

For the reasons stated in the preamble, EPA amends 40 CFR parts 52 and 81 as set forth below:

PART 52-APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart AA-Missouri

2. In §52.1320:

a. The table in paragraph (d) is amended by adding the entry “(35)” in numerical order.

b. The table in paragraph (e) is amended by adding the entry “(82)” in numerical order.

The additions read as follows:

§52.1320 Identification of plan.

* * * * *

(d) * * *

EPA-APPROVED MISSOURI SOURCE-SPECIFIC PERMITS AND ORDERS

Name of source	Order/Permit number	State effective date	EPA Approval date	Explanation
* * * * *				

(35) Vicinity Energy- Kansas City	Consent Agreement No. APCP-2021-007	6/25/2021	[insert date of publication in the Federal Register], [insert Federal Register citation]	
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(e) * * *

EPA-APPROVED MISSOURI NONREGULATORY SIP PROVISIONS

Name of nonregulator y SIP revision	Applicable geographic or nonattainm ent area	State submittal date	EPA approval date	Explanation
* * * * *				
(82) Jackson County 1- hour SO ₂ NAAQS Maintenance Plan and Maintenance Plan Supplement	Jackson County	2/18/2021 ; 9/7/2021	[insert date of publicati on in the Federal Register] , [insert Federal Register citation]	This action approves the Maintenance Plan and the Maintenance Plan Supplement for the Jackson County area.

3. In §52.1343, add paragraph (d) to read as follows:

§52.1343 Control strategy: Sulfur dioxide.

* * * * *

(d) *Redesignation to attainment.* As of [insert date 30 days
after date of publication in the Federal Register], the Jackson
County 2010 SO₂ nonattainment area is redesignated to attainment
of the 2010 SO₂ 1-hour National Ambient Air Quality Standard
(NAAQS) in accordance with the requirements of Clean Air Act

(CAA) section 107(d)(3) and EPA has approved its maintenance plan and maintenance plan supplement as meeting the requirements of CAA section 175A.

PART 81-DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

4. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart C-Section 107 Attainment Status Designations

5. In §81.326, revise the entry "Jackson County, MO" in the table entitled "Missouri-2010 Sulfur Dioxide NAAQS [Primary]" to read as follows:

§81.326 Missouri.

* * * * *

Missouri-2010 Sulfur Dioxide NAAQS

[Primary]

Designated area ¹	Designation	
	Date ²	Type
Jackson County, MO	[insert date 30 days after date of publication in the Federal Register]	Attainment.
Jackson County (part)		
The portion of Jackson County bounded by I-70/I-670 and the Missouri River to the north; and, to the west of I-435 to		

the state line separating Missouri and Kansas.		
* * *	* *	* *

¹Includes any Indian country in each county or area, unless otherwise specified. EPA is not determining the boundaries of any area of Indian country in this table, including any area of Indian country located in the larger designation area. The inclusion of any Indian country in the designation area is not a determination that the state has regulatory authority under the Clean Air Act for such Indian country.

²This date is April 9, 2018, unless otherwise noted.

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[FR Doc. 2022-01649 Filed: 1/28/2022 8:45 am; Publication Date: 1/31/2022]